IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO.No.189/2003

Ravi Kumar Gupta & Anr. ..... Appellants
! through: Mr.Sanjeev Mehta, Advocate with
Ms. Aruna Mehta, Advocate

VERSUS

$ Sh. Bir Singh & Ors. ..... Respondents
^ through: Mr. P.K.Seth, Advocate with
Mr. Mohd. Raghib, Advocate

RESERVED ON : 24-04-07

% **D**ATE OF DECISION: 01-05-07

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.

1. On 13.8.93, deceased, Vijay Lakshmi Gupta, died in a road accident involving bus bearing no. DL-IP-4469. She was survived by a son aged 28 years and a daughter. Both the children were married as on the date of the accident.

2. They filed a claim petition under Section 140 read with Section 166 of the Motor Vehicles Act, 1988 claiming a compensation of Rs. 12 lakhs on account of death of the deceased in the said road accident.

3. After holding driver of the offending bus guilty of rash and negligent driving, learned Tribunal awarded compensation in sum of Rs.1,30,000/-.

4. It was stated in the claim petition that deceased was a property dealer and that she was earning Rs.3,000/- p.m. at the time of the accident. It was further stated that the deceased was residing with his son and used to contribute major portion of her earnings towards household expenses.

5. Considering that the son of the deceased was himself earning Rs.2,500/- p.m. and that the daughter of the deceased was also married at the time of the accident, learned Tribunal has determined the loss of dependence at Rs.1,000/- p.m.

6. Noting that the deceased was aged 43 years at the time of the accident, multiplier of 10 has been applied by the Tribunal.

7. Thus, total loss of dependence is determined at Rs.1,20,000/- (Rs.1,000/- X 12 X 10 = Rs.1,20,000/-)

8. Adding thereto, a sum of Rs.5,000/- for funeral expenses and Rs.5,000/- for loss of estate, total compensation is determined at Rs.1,30,000/-.

9. Aggrieved by the compensation awarded by the Tribunal, children of the deceased (claimants/appellants) have filed the present appeal praying for the enhancement of compensation.

10. Learned counsel contended that in view of the fact that the deceased was residing with her son and that she used to contribute major portion of her earnings (Rs.3,000/- p.m.) towards household expenses, loss of dependence determined at Rs.1,000/- p.m. by the Tribunal is on the lower side. He has cited

several decisions in support of his contention. I shall deal with them at a later stage.

11. Before proceeding with the issue of compensation, I note one patent error committed by the Tribunal while evaluating the evidence.

12. In the claim petition, age of the deceased is stated as 45 years. While, the son of the deceased in his testimony as PW-1 had deposed that the deceased was aged 42-43 years at the time of the accident.

13. Relying upon the testimony of son of the deceased, Tribunal has taken the age of deceased at the time of the accident as 43 years.

14. In view of inconsistency in the averments made in claim petition and testimony of the son of the deceased, Tribunal has erred in determining the age of the deceased at the time of the accident on the basis of the testimony of the son of the deceased.

15. Considering that the son of the deceased (eldest child of the deceased) was aged 28 years at the time of the accident, it could reasonably be assumed that deceased must have been aged at least 47 years at the time of the accident. I take age of the deceased as 47 years.

16. On the issue of the earning of the deceased, it is to be noted that in the claim petition, earnings of the deceased at the time of the accident is stated as Rs.3,000/- p.m. While, the son of the deceased in his testimony as PW-1 had deposed that the

deceased was earning about Rs.6,000/- to Rs.7,000/- p.m. at the time of the accident.

17. The Tribunal has taken income of the deceased as Rs.3,000/- p.m. Correctly so. There is no proof that deceased was earning Rs.6000/- to Rs.7000/- per month.

18. While determining the loss of dependence, Tribunal has rightly ignored the prospects of future increase in the income of the deceased for the reason business of property dealer is a speculative business and thus there can be no estimation regarding the future prospects. Further there is no evidence of the past.

19. What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula by universal application. It would depend upon circumstances of each case.

20. In the instant case, considering that the deceased was aged 47 years, both her children were married and the fact that she was self employed which means that she would have also spent a portion of her income for business related expenses, Tribunal has rightly deducted 2/3rd of her income towards personal expenditure.

21. Thus, Tribunal has rightly determined loss of dependence at Rs.1,000/- p.m.

22. The object and purpose of awarding pecuniary compensation is to determine the pecuniary loss suffered by the dependent/claimants as a result of the death of the deceased. Compensation is determined by balancing the loss suffered by the

dependents of the future pecuniary benefit because of the death of the deceased and any other pecuniary advantage gained by the dependents by the death. *What is payable is the actual pecuniary loss suffered by the dependents due to the death.*

23. In the instant case, it is an admitted fact that son of the deceased was aged 28 years, married and was earning Rs.2,500/- p.m. at the time of the accident. No evidence was led to show that the deceased was contributing major portion of her earnings for running the household. The daughter of the deceased was also married at the time of the accident.

24. Thus, the children cannot be considered as dependents of the deceased. At best, they can be considered as beneficiary of the estate of the deceased.

25. Be that as it may, Tribunal has awarded loss of dependence to the appellants. Since there are no cross objections, I do not interfere with the award.

26. Learned counsel for the appellants has cited following decisions in support of his contention:-

(i) *Union of India Vs. Jhansi Ram* 1992 ACJ 665. In the said case, a woman expired in a rail accident. Claim for damages was filed by the husband of the deceased who was also an earning member and the kitchen was maintained by the common pool of the income of both husband and wife. It was held that the legal representatives, i.e. the husband who was partially dependent on the income of the deceased was entitled for compensation as the household expenses were run by the joint contribution of the husband and wife.

(ii) *Chol Roadways Corporation Vs. Pabunraj & Ors.* 2000 ACJ 616. In this case it was held that the married son of the deceased from his first wife living separately from the deceased but dependent upon him is entitled to compensation.

(iii) *Gujarat State Road Transport Corporation Vs. Raman Bhai & Prabhat Bhai* 1987 ACJ, 561 Supreme Court has held that in

Indian family, brothers, sisters, brother's children and sometimes foster children live together and they are dependent upon the bread winner of the family and if the bread winner is killed in an accident, there is no justification to deny them compensation.

(iv) *Madhya Pradesh Electricity Board Vs. Ram Mohan Srivastava* 1998 ACJ 651 It was held that where the household expenses is run by the common pool of the husband and wife then the husband and daughter are entitled to claim compensation regarding the contribution towards the household expenses.

27. None of the aforenoted decisions help the case of the appellants. All decisions are on an issue of entitlement of compensation and not on quantum of compensation.

28. I fail to understand the relevancy of aforenoted decisions for the reason Tribunal has awarded compensation for loss of dependence to the children of the deceased.

29. No ground for enhancement is made out.

30. Appeal is dismissed.

31. No costs.

32. LCR be returned.

May 1, 2007 PRADEEP NANDRAJOG, J.
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